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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.A., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B293624  
(Super. Ct. No. J071563)  
(Ventura County)

VENTURA COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.D.,

Defendant and Appellant.

C.D. (Mother) appeals the juvenile court's order that terminated her parental rights to her daughter, C.A. (Welf. & Inst. Code,<sup>1</sup> § 366.26.) She contends the court erred when it

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

found that the beneficial relationship exception to adoption did not apply (§ 366.26, subd. (c)(1)(B)(i)). We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In July 2017, Mother left then-four-year-old C.A. unattended, and C.A. walked to a nearby street where she was almost struck by cars and played unattended for over 45 minutes. Mother was subsequently arrested for child endangerment, and C.A. was placed with her paternal grandparents.

The Ventura County Human Services Agency (HSA) filed a petition which alleged that Mother failed to protect C.A. (§ 300, subd. (b)). The petition also alleged that four days before the incident, Mother had been arrested and charged with being under the influence while C.A. was in her care; that Mother had a history of substance abuse; and that Mother failed to protect her from C.A.'s father's substance abuse. The petition further alleged that Mother abused or neglected C.A.'s two older half siblings (§ 300, subd. (j)). Both half siblings were declared dependents of the court due to Mother's substance abuse. They were adopted after Mother's parental rights were terminated.

The juvenile court sustained the allegations in the petition. It ordered reunification services for Mother.

### ***Six-month Review and Hearing***

The six-month report stated that from July 31, 2017 to January 23, 2018, Mother was offered a total of 50 visits, and she missed 12. She gave advance notice of all 12 missed visits. The report noted that the "quality of [Mother's] visits with the child is strong."

In February 2018, Mother missed five of six scheduled visits. Her visits were then suspended. While her visits were suspended, Mother showed up "inappropriate[ly]" to

one of the father's visits. After her visits were reinstated, Mother did not call to confirm a scheduled visit, and it was cancelled.

Mother's case plan required her to participate in general counseling, parenting education courses, and substance abuse testing and treatment. The six-month report stated that Mother began "A New Start for Moms (ANSFM)" program in August 2017 and received individual and group counseling and parenting classes. She stopped attending group counseling and parenting classes in late October. Her ANSFM case was closed because she went 30 days without contact and did not attend counseling or parenting classes. Mother was required to participate in a 12-step drug treatment program, but she did not provide verification of her attendance. She also did not find a sponsor.

In September and November 2017, Mother was arrested on two separate occasions for drug offenses. She was convicted of being under the influence of a controlled substance in November 2017. In December 2017, Mother gave birth to her seventh child, who was born premature and placed in protective custody. Mother's five other children had previously been removed from her care and resided with other relatives.

The report stated that Mother did not make "any significant efforts beyond visitation to demonstrate an ability to provide care for the child." Mother continued to "be involved with the law," and did not understand how her actions were detrimental to C.A.'s safety. The report further stated that Mother ignores her codependency and emotional issues and minimizes her substance abuse issues.

At the six-month review hearing, the juvenile court terminated Mother's reunification services, and set the section 366.26 hearing.

***The Section 366.26 Report and Hearing***

From January to June 2018, Mother was offered 40 supervised visits (twice a week) at the Children and Family Services (CFS) office, but she only attended 17 visits. Mother was late to some of the visits that she attended. Mother was 45 minutes late to a visit in May 2018.

HSA suspended Mother's supervised visits in June 2018 because she missed more than two consecutive visits. After her visits were reinstated, HSA scheduled 13 visits, but Mother missed three visits and one was cancelled because of safety concerns. Mother showed up "extremely late" to all but two of these visits.

Mother also had weekly visits outside CFS offices that were supervised by the grandparents. The grandparents reported that Mother "missed more visits than she has shown up to." In August 2018, Mother was over an hour late for a scheduled visit, and the grandparents left. During several visits in August, Mother got into arguments with the grandparents and acted "hostile and combative" towards them. Because of this, the grandparents stopped supervising Mother's visits.

The report stated that Mother did "not [make] any significant efforts" to demonstrate an ability to care for C.A. because she continues to have emotional issues and minimizes her substance abuse issues. Mother did not resolve "her mental health concerns" and did not exhibit an understanding of how her actions affect C.A. Mother had not sought mental health or substance abuse treatment.

The report stated that the grandparents wanted to adopt C.A. C.A. had resided with them since she was a month old, except for a brief period when the parents moved out of the grandparents' home in March 2017. She was placed in the grandparents' care in July 2017 and has been living with them ever since. The report stated that the grandparents were "aware of the child's daily needs and have been able to consistently meet those needs." The grandparents have developed a "significant bond" with C.A. and have provided "stability and support" for her. The report also noted that during visits, C.A. exhibited a "strong attachment" to Mother and expressed that she would like to see her "a lot of days."

In September 2018, the juvenile court held the contested section 366.26 hearing. The court found that Mother did not establish the beneficial relationship exception applied. It found C.A. adoptable by clear and convincing evidence and terminated Mother's parental rights.

### **DISCUSSION**

If the juvenile court finds clear and convincing evidence that it is likely a child will be adopted, it must terminate parental rights unless it "finds a compelling reason for determining that termination would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) Termination will be detrimental if the parent shows that: (1) they "have maintained regular visitation and contact" and (2) "the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

A parent who has not reunified with an adoptable child may not prevent an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or that

the parental relationship may be beneficial to the child to some degree. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The parent bears the burden to establish that “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The exception applies only in extraordinary cases, because the permanent plan hearing occurs after the court has repeatedly found the parent is unable to meet the child’s needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) We review the juvenile court’s determination of whether the beneficial relationship exception applied for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

Mother does not show the beneficial relationship exception applies. She does not meet the first prong of the exception because she has not maintained regular visitation and contact. Between January and June 2018, Mother attended only 17 of 40 HSA-supervised visits. In June, HSA suspended her visits because she missed more than two consecutive visits. After June, Mother missed two of thirteen visits and one was cancelled for safety concerns. She was late to all but two of the visits she attended. Moreover, Mother was allowed additional weekly visits that were supervised by the grandparents, but she “missed more visits than she has shown up to.” The grandparents also reported that Mother was late to several of these visits.

Neither does Mother meet the second prong of the exception because she does not demonstrate that her relationship outweighs the benefits of adoption. The reports stated that the “quality of [Mother’s] visits with the child is strong” and that C.A.

exhibited a “strong attachment” to Mother. But at most, this evidence only establishes Mother had positive visits with C.A. Frequent and loving contact, pleasant visits, and an emotional bond are not enough to establish the exception. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show that he or she occupies a “parental role” in the child’s life. (*Ibid.*)

The evidence does not establish that this showing has been made. C.A. is now six years old, and has lived almost her entire life with her grandparents. The reports stated that the grandparents were aware of C.A.’s needs and have consistently met her needs. They have provided her with support and stability.

The evidence shows that Mother has not resolved many of the underlying issues that contributed to C.A.’s removal from her care. The six-month report stated that Mother continued to “be involved with the law” and was convicted of being under the influence of a controlled substance in November 2017. Mother ignored or minimized her mental health, emotional, and substance abuse issues and did not participate in counseling, parenting education programs, and substance abuse treatment.

Mother cites to *In re E.T.* (2018) 31 Cal.App.5th 68, 77, in which the court found the beneficial relationship exception applied where the evidence showed that the mother had a strong bond with her children. However, there was other evidence to support the application of the exception, such as the mother’s regular visitation, participation in programs and treatment, and consistent negative drug tests. (*Ibid.*) Here, such evidence is lacking.

**DISPOSITION**

The judgment (order terminating parental rights and selecting adoption as the permanent plan) is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.



Ellen Gay Conroy, Judge

Superior Court County of Ventura

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Liana Serobian, under appointment by the Court of  
Appeal, for Defendant and Appellant.

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